

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

- - - - -  
ESTATE OF ROGER D. :  
OWENSBY JR., et al., :  
 :  
Plaintiffs, :  
vs. : Case No. 01-CV-769  
 : (Judge S. A. Spiegel)  
CITY OF CINCINNATI, :  
et al., :  
 :  
Defendants. :  
- - - - -

VOLUME I

Deposition of DANIEL L. SCHULTZ, M.D., a  
witness herein, called by the plaintiffs for  
cross-examination, pursuant to the Federal Rules of  
Civil Procedure, taken before me, Wendy Davies  
Welsh, a Registered Diplomate Reporter and Notary  
Public in and for the State of Ohio, at the Frank P.  
Cleveland, M.D. Institute of Forensic Medicine,  
Toxicology and Criminalistics, 3159 Eden Avenue,  
Cincinnati, Ohio, on Wednesday, December 17, 2003,  
at 11:57 a.m.

1	APPEARANCES:	Page 2	1	STIPULATIONS	Page 4
2	On behalf of the Plaintiffs:		2	It is stipulated by and among counsel for the	
3	Paul B. Martins, Esq.		3	respective parties that the deposition of DANIEL L.	
4	Helmer, Martins & Morgan Co. LPA		4	SCHULTZ, M.D., a witness herein, called by the	
5	Suite 1900, Fourth & Walnut Centre		5	plaintiffs for cross-examination, pursuant to the	
6	105 East Fourth Street		6	Federal Rules of Civil Procedure, may be taken at	
7	Cincinnati, Ohio 45202		7	this time by the notary; that said deposition may be	
8	Phone: (513) 421-2400		8	reduced to writing in stenotype by the notary, whose	
9	John J. Helbling, Esq.		9	notes may then be transcribed out of the presence of	
10	The Helbling Law Firm, L.L.C.		10	the witness; and that proof of the official	
11	3672 Springdale Road		11	character and qualifications of the notary is	
12	Cincinnati, Ohio 45251		12	expressly waived.	
13	Phone: (513) 923-9740		13	- - -	
14	On behalf of the Defendants City of Golf Manor,		14		
15	Stephen Tilley, Roby Heiland and Chris		15		
16	Campbell:		16		
17	Wilson G. Weisenfelder, Jr., Esq.		17		
18	Rendigs, Fry, Kiely & Dennis		18		
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21	Cincinnati, Ohio 45202-3688		21		
22	Phone: (513) 381-9200		22		
23	On behalf of Defendants City of Cincinnati,		23		
24	Darren Sellers, Jason Hodge:		24		
	Geri Hernandez Geller, Esq.				
	Assistant City Solicitor				
	Department of Law				
	Room 214, City Hall				
	801 Plum Street				
	Cincinnati, Ohio 45202				
	Phone: (513) 352-3346				
	Neil F. Freund, Esq.				
	Freund, Freeze & Arnold				
	One Dayton Centre				
	1 South Main Street, Suite				
	1800 Dayton, Ohio 45402				
	Phone: (937) 222-2424				
1	APPEARANCES (Continued):	Page 3	1	INDEX	Page 5
2	On behalf of the Defendants Robert B. Jorg,		2	Examination by: Page	
3	Patrick Caton, Jason Hodge, Victor Spellman and		3	Mr. Martins . . . . . 6	
4	Darren Sellers:		4	Mr. Freund . . . . . 74, 121	
5	Donald E. Hardin, Esq.		5	Mr. Weisenfelder . . . . . 105	
6	Hardin, Lefton, Lazarus & Marks, LLC		6	- - -	
7	915 Cincinnati Club Building		7	EXHIBITS	
8	30 Garfield Place		8	Page	
9	Cincinnati, Ohio 45202		9		
10	Phone: (513) 721-7300		10	Plaintiff's Exhibit 101 . . . . . 6	
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1 Q. 255?

2 A. 255 shows a very faint pattern -- not a  
3 pattern, faint abrasion of the chest, below the left  
4 breast area. I say "not a pattern" because it  
5 doesn't have anything that strikes me as being due  
6 to a specific object.

7 Q. 256?

8 A. 256 is viewed from the right side of Mr.  
9 Owensby's head. You can see the right cheek with  
10 abrasions. You can see the upper lip. Note, the  
11 right aspect of the upper lip has been shaved. I  
12 shave the mustache away in order to show the  
13 abrasion to the right aspect of the upper lip. And  
14 then you also see the abrasions of the forehead.

15 Q. 257?

16 A. 257 is viewed from the left side of Mr.  
17 Owensby's head, and it shows the abrasions to the  
18 forehead.

19 Q. And 258?

20 A. 258 is a view of Mr. Owensby from the  
21 front showing the abrasions to the forehead, showing  
22 the mustache which has been shaved, showing the  
23 abrasions to the right aspect of the upper lip,  
24 showing a slight amount of this emesis material in

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1 the nostrils. And that's about it.

2 Q. With respect to the finding of the deep  
3 musculature contusions in the area of the shoulder  
4 blades, would those contusions be consistent with a  
5 person weighing approximately, with equipment,  
6 270 pounds, kneeling on Mr. Owensby's back?

7 MR. HARDIN: Objection.

8 MS. GEILER: Objection.

9 A. It could be, yes.

10 Q. It could be consistent with that?

11 A. Right. It's not inconsistent. It's  
12 consistent.

13 Q. If that person had their arms or arm  
14 around the head of Mr. Owensby and were pulling the  
15 head back while kneeling on the back, would these  
16 injuries be consistent with that also?

17 MR. HARDIN: Objection.

18 MR. FREUND: Objection.

19 A. They are consistent.

20 Q. I take it from the analysis of the blood,  
21 the blood analysis, you found, with the exception of  
22 the traces of marijuana, you found no presence of  
23 any other drugs?

24 A. Correct.

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1 Q. And no traces of alcohol?

2 A. Correct.

3 Q. Since conducting your post-mortem exam,  
4 you have testified in two trials, one of officer  
5 Jorg and one of Officer Caton. As a result of  
6 either reviewing documents in preparation for those  
7 trials or since those trials, have you seen anything  
8 to alter the opinions that you gave in your report  
9 here that we've examined today?

10 MR. FREUND: Objection.

11 A. No.

12 Q. Cause you to change your opinions?

13 A. No.

14 Q. In this kind of death, a mechanical  
15 asphyxiation death, does it occur immediately or  
16 does it take a period of time to occur?

17 A. It takes minutes.

18 Q. In the case of Mr. Owensby, with a  
19 mechanical asphyxia death, then can you say within a  
20 reasonable degree of medical certainty in the field  
21 of pathology that his death would have taken a  
22 number of minutes?

23 A. Yes.

24 Q. Are you able to quantify either the range

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1 of minutes or how many minutes would have been  
2 involved?

3 A. No.

4 Q. Can you describe for us, beginning with  
5 the compression that starts this asphyxia through  
6 the time of death, what the body would experience?

7 A. Well --

8 MR. FREUND: Object.

9 A. Aside from the struggle, the first thing  
10 that happens is the person loses consciousness.

11 MR. MARTINS: Hold on a second.

12 MR. FREUND: He answered the question.  
13 That was the point of my objection. The way  
14 you asked the question, the patient -- the  
15 person could have been unconscious.

16 MR. MARTINS: Okay.

17 Q. Describe the process, from when the  
18 compression first starts through death, what happens  
19 to the person's body? What processes come into  
20 play?

21 MR. FREUND: Objection as to the form of  
22 that question.

23 A. Well, all I can say is with this type of  
24 death there are, of course, attempts to breathe.

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1 body?

2 MR. HARDIN: Objection.

3 MR. FREUND: Objection.

4 MR. WEISENFELDER: Objection as to form.

5 MR. FREUND: You've got a unanimous  
6 objection on that one.

7 A. That distinction is made based on the  
8 autopsy examination, post-mortem examination, and  
9 details from the scene. Although, the autopsy  
10 examination is very compelling, in that all other  
11 reasonable causes of his asphyxia, his death for  
12 that matter, have been excluded.

13 So since I don't have an intoxicated  
14 individual in the vehicle, I don't have -- I can't  
15 get him to that vehicle in a conscious state and  
16 then suddenly die in the car. That doesn't make  
17 reasonable medical sense. What makes sense, since I  
18 know that that isn't going to -- can't happen, is  
19 that he died on the ground. That's my opinion.

20 Q. Can you tell me to a reasonable degree of  
21 medical certainty whether or not, when they pick him  
22 up off the ground, whether he is dead or whether he  
23 is unconscious at that point?

24 MR. FREUND: Objection.

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1 A. He is either deceased or in very agonal  
2 phases where there's just a faint rhythm, but he is  
3 not moving to his own accord.

4 Q. I understand that.

5 A. Yeah.

6 Q. The distinction I'm trying to make is, was  
7 he unconscious or can you say, based on a reasonable  
8 degree of medical certainty in the field of  
9 pathology, whether or not, when they pick him up,  
10 whether he is dead or whether he is unconscious?

11 MR. HARDIN: Objection.

12 MR. FREUND: Objection.

13 A. I can't fully distinguish between that. I  
14 can simply say that he's either totally deceased or  
15 he is in the agonal, unconscious phases before  
16 death. But he isn't just dying after being placed,  
17 just sitting in the car and dying. That's my point.

18 Q. I take it from your answer that within a  
19 reasonable degree of medical certainty you can say  
20 that he was not able to walk to the car on his own  
21 power?

22 MR. FREUND: Objection.

23 A. Yes, I can say that.

24 Q. Certainly, within a reasonable degree of

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1 medical certainty, he would not have been, when they  
2 picked him up off the ground, any kind of flight  
3 risk?

4 A. No.

5 MR. FREUND: Objection.

6 MR. HARDIN: Objection. Leading.

7 Q. Can you say to a reasonable degree of  
8 medical certainty whether or not Mr. Owensby could  
9 have offered any physical resistance to the police  
10 officers when he was picked up off the ground?

11 MR. HARDIN: Objection.

12 MR. FREUND: Objection.

13 A. My opinion would be that he would not  
14 offer physical resistance when he was picked up and  
15 transferred to the car.

16 Q. That would be to a reasonable degree of  
17 medical certainty in the field of pathology?

18 MR. FREUND: Objection.

19 A. Yes.

20 MR. MARTINS: Let's take a short break.

21 (Recess taken: 1:38 p.m. - 1:46 p.m.)

22 BY MR. MARTINS:

23 Q. Back on the record. Doctor, I ask you to  
24 take a look again at Exhibit 12, which is the lab

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1 report. I just want you to explain, did you examine  
2 the shirt sleeve that's the subject of this report?

3 A. No.

4 Q. There's a reference to presence of amylase  
5 or amylase (pronouncing). Do you know what that is?

6 A. Spit.

7 Q. Thank you.

8 A. It is an enzyme that's in oral secretions.

9 Q. In saliva?

10 A. Uh-huh. It's what breaks down  
11 carbohydrates.

12 (Plaintiff's Exhibit  
107 was marked for

13 identification.)

14 Q. I want to show you now Exhibit 107, just a  
15 colored diagram. The vein in blue in the diagram,  
16 is that the jugular vein?

17 A. Yes.

18 Q. Is that a fair representation of where on  
19 the human body the jugular vein runs on the neck?

20 A. Yes.

21 (Plaintiff's Exhibit  
108 was marked for

22 identification.)

23 Q. I'll show you Exhibit 108. Exhibit 108, I  
24 want to direct your attention to page 11.